

# CLAS CIRCULAR

## 2018/11 (3 May 2018)

### Disclaimer

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It would be very helpful if members could let us know of anything that appears to indicate developments of policy or practice on the part of Government or other matters of general concern that should be pursued.

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## CHARITIES & CHARITY LAW

### Charity Commission safeguarding taskforce - interim report

For information

The Charity Commission has published an interim [report](#) on the work of its safeguarding taskforce, which was established in February 2018 following a number of high-profile cases and the subsequent increase in serious reporting. The Commission has seen a marked increase in reports of serious safeguarding incidents from charities since February; these relate both to historic and more recent incidents. In February and March 2018, the Commission received 532 serious incident reports on safeguarding, compared to 176 during the equivalent period in 2017.

The taskforce has also been undertaking a detailed analysis of its records of past serious incident reports on safeguarding matters to identify any gaps in full disclosure by charities and to establish whether appropriate follow-up actions were taken. The team has analysed a total of 5,501 serious incident reports between 1 April 2014 and 20 February 2018. Of these incidents, just over 2,000 involved allegations of potential criminal behaviour; the Commission's analysis has identified that only one of those incidents was not reported to the authorities at the time. The Commission has ensured that this incident has now been reported to the police. Analysis so far has not identified any cases where the Commission has serious and urgent concerns that require it to take immediate action, or where it has had to engage with the authorities about any ongoing risk or criminality.

[Source: Charity Commission – 19 April]

### Citizenship and Civic Engagement report

For information

The House of Lords Committee on Citizenship and Civic Engagement has published its final [report](#) on the areas in which the UK is currently successful in promoting a positive "civic journey" and making a series of recommendations for how it might improve. Among other things, it draws attention to the positive contribution of volunteers to society and the strength of the UK's volunteering sector.

It highlights the achievements of the National Citizens Service (NCS) but notes that the NCS sometimes fails to reach excluded communities in deprived areas. It makes a series of recommendations for how the NCS might be made more effective, including how it might better reach out to its alumni and continue to support them over time. It also makes suggestions as to how the NCS should promote active citizenship and how it might do more to work in partnership with schools and colleges.

On volunteering more generally, the report recommends that the unemployed should be encouraged to volunteer and argues that more should be done to recognise and reward outstanding contributions made to society by volunteering.

[Source: Citizenship and Civic Engagement Committee – 18 April]

### **Fundraising Regulator upholds FPS suppression request complaint**

**For information**

The Fundraising Regulator has [published](#) an additional ruling alongside the case studies on its website highlighting how it deals with complaints from members of the public about fundraising. Case Study 12 details a situation in which a charity continued to contact a member of the public for months after they had used the FPS to request the suppression of all marketing materials from the charity.

The Regulator found that, although the charity had set up its FPS record and were receiving regular FPS notifications, the charity's internal FPS process was dependant on one individual who failed to properly update the charity's database. This meant that the individual's FPS request was not actioned for nearly three months. The charity was also found not to have a proper process in place for monitoring whether FPS requests were being actioned appropriately.

The charity has since accepted the Regulator's findings and has carried out an internal review of its processes to ensure that it does not breach the Fundraising Code again. The Regulator has decided not to make any further recommendations. However, this case study serves as an important reminder to charities to ensure that they have robust processes in place for checking that they no longer send marketing materials to those who have specifically requested it via the FPS.

[Source: Fundraising Regulator – 25 April]

**Trustees and conflicts of interest**

**For information**

The Church of England's General Synod Legal Advisory Commission has published an [Opinion](#) on "friends" charities and possible conflicts of interest. The issue is that a number of unincorporated charitable associations have been established as "friends" of a particular church, typically to help preserve, repair, maintain, restore and improve the fabric, furniture, ornaments and contents of that church and its churchyard for the benefit of the public. The point of friends' charities is to build up a supporter base for church buildings among those who may never attend the church in question but nevertheless value it as a heritage and community assets.

In May 2014 the Charity Commission published "Conflicts of interest: a guide for charity trustees" (CC29), as a result of which, concerns have been expressed as to whether it is appropriate for the incumbent and churchwardens to act as trustees of a "friends of" charity or whether their role should be relegated to one of being invited to attend and speak at meetings but withdrawing prior to any decision or vote being taken. A further concern is whether a trustee of a friends charity should also properly serve on the relevant PCC.

CC29 recognises that though there may be a decision at one charity that also affects another, the similarity of charitable purpose between the two may mean that any conflicts of loyalty which do occur pose no risk, or only a low risk, to decision-making in the best interests of the first charity and that the affected trustee(s), having declared their other interest, can then participate in its decision-making. The LAC believes that this is the position in the case of a friends' charity and the relevant incumbent and PCC members.

While, obviously, this is of particular importance to the Church of England – which probably has the largest number of "friends" organisation because it has the largest share of listed places of worship – it may be of interest to CLAS members from other denominations.

[Source: General Synod Legal Advisory Commission – 2 May]

## EMPLOYMENT & VOLUNTEERING

### Religion and the “Genuine Occupational Requirement”

For information

#### *The background*

The issue of what constitutes a Genuine Occupational Requirement for employment by a religion or belief organisation has come up again, this time in the Grand Chamber of the CJEU. In *Vera Egenberger v Evangelisches Werk für Diakonie und Entwicklung eV* [2018] EUECJ C-414/16, the Grand Chamber has reaffirmed that *where religion or belief organisations impose a Genuine Occupational Requirement when recruiting staff, that requirement must be both genuine, legitimate and justifiable.*

In brief, Ms Egenberger had applied for a post with an auxiliary organisation of the *Evangelische Kirche in Deutschland* [EKD], to prepare a report on Germany's compliance with the UN International Convention on the Elimination of All Forms of Racial Discrimination.

The job advert stated that candidates should be members of a Protestant Church or of a member-Church of the Cooperative of Christian Churches in Germany. When she failed to get the job, she claimed discrimination on the basis of belief because she did not belong to any religious community. The Federal Labour Court sought an advisory opinion from the Court of Justice on the application of Directive 2000/78/EC – the Equal Treatment Directive.

#### *The opinion of the Grand Chamber*

The Court found that, under the Directive, the right to autonomy of Churches (and other religion or belief organisations) had to be balanced fairly with the right of workers not to be discriminated against on grounds of religion or belief – *including during the recruitment process.* Any requirement about the religion of applicants had to be a genuine, legitimate and justified occupational requirement for the post, having regard to the ethos of the church or organisation in question.

It was for the national courts to interpret the national law transposing the Directive, so far as possible, in conformity with the Directive. But if it proved impossible to interpret the applicable national law (in this case, the German General Law on equal treatment) in conformity with the Anti-Discrimination Directive, *a national court hearing a dispute between two individuals would have to disapply the national law.*

Because the Charter of Fundamental Rights applied to such cases, the national court had to enforce the mandatory prohibition of discrimination on grounds of religion or belief under Article 21 of the Charter and the right to effective judicial protection under Article 47. Both gave claimants an enforceable right in disputes with other individuals in a field covered by EU law.

In short, a Genuine Occupational requirement has to be *genuine*. It should also be remembered that judgments of the CJEU – unlike judgments of the ECtHR – are immediately binding on Member States.

[Source: CJEU – 18 April] For a much longer, detailed summary click [here](#).

## EUROPE

### New Energy Performance of Buildings Directive

For information

MEPs have [voted in favour](#) of updated legislation that would oblige Member States to develop national long-term strategies to support cost-saving renovation of public and private buildings with a view to reducing emissions in the EU by 80-85 per cent compared to 1990 levels.

Proposals aim primarily to increase the energy performance of both new and existing buildings, to support the deployment of electric charging infrastructure and to encourage the implementation of national renovation strategies. In practice, this will mean that new buildings and those undergoing major renovations will need to include at least one recharging point for electric vehicles in buildings with more than ten parking spaces. It will also require the installation of cabling infrastructure for recharging electric vehicles.

The text also introduces a “smart readiness indicator” - a new tool to measure the ability of buildings to improve their operation and interaction with the grid, adapting energy consumption to the real needs of the occupant. On top of this, in both new and existing buildings where heat generators are replaced they must include automated devices to regulate temperature levels, while rules on inspection of heating and air-conditioning systems and building automation have been tightened up.

[Source: European Parliament – 17 April]

## ODDS & ENDS

### New music licensing company launched

For information **and possibly for action**

A new music licensing company has been [launched](#), in a joint venture between the UK's two music licensing bodies, PPL and PRS for Music.

PPL PRS has been set up in order to provide users with a more streamlined service, providing a single licence covering both companies' respective rights, thereby simplifying the administration and making it easier to play and perform music in public. The new joint licence is called TheMusicLicence and ends the need for customers to purchase separate PPL and PRS for Music licences from each individual organisation.

[Source: PPL PRS – 12 April]

### Yet more on the GDPR

For information **and possibly for action**

The C of E's parish resources website has published [Data Protection: Parishes and the "GDPR"](#) with a lot of useful information. Many member-Churches in CLAS have published their own guidance, but for those that haven't, this is not a bad place to start.

[Source: C of E Parish Resources – 2 May]

## PROPERTY & PLANNING

### Bat Habitats Regulation Bill [*Lords*]

For information

On Friday 27 April, the House of Lords held the [second reading debate](#) on the Bat Habitats Regulation Bill, introduced by **Lord Cormack (Con)**. The Government was unimpressed.

**Lord Cormack** said that his Bill was not "anti-bat" but he was keen to emphasise that churches should be protected from incursions that threaten their condition and purpose. He cited two letters he had received that mentioned bat droppings and urine, which had caused issues in churches nationwide. After discussions with heritage bodies, he had concluded that there was insufficient funding available for most institutions to deal with the scale of their bat problems.

Backbench contributions were mixed. **Lord Redesdale (Lib Dem)** took Lord Cormack's points, but emphasised that some proposed solutions to bat issues, notably bat boxes, had been ineffective. He also noted that churches were some of the last places in which bats could thrive because of the destruction of some of their natural habitats and suggested specific exemption for churches of particular merit, rather than excluding all places of worship. **Viscount Goschen (Con)** pointed out the high cost of bat surveys and pleaded for more flexibility for local authorities and national park planning authorities to take an intelligence-led, flexible and proportionate approach. **The Bishop of Norwich** said that it was unfair that churches should be treated differently in law from private dwellings and mentioned the joint five-year Bats in Churches project involving the Church of England, Natural England, Historic England, the Bat Conservation Trust and the Churches Conservation Trust.

**Lord Gardiner of Kimble**, Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs, speaking for the Government, emphasised the importance of churches as a habitat for bats in Britain, following the destruction of much of their natural environment. He questioned whether the bill's proposal of a blanket removal of protection for bats in places of worship would contravene the Berne Convention and the EU habitats directive:

‘under the ... directive, which will continue under UK law through the withdrawal Bill, it is a criminal offence deliberately to kill, injure, take or disturb bats. Bat species are also protected from disturbance in their place of rest or the deliberate obstruction of such locations.

The Bill ... proposes that bats be excluded from a building used for public worship unless it has been demonstrated that their presence would not have a significant adverse impact

on the users of such a place. Such a blanket prohibition does not take account of the importance of some churches to some of our most vulnerable bat populations, or of the considerable steps that the Government in collaboration with others are already taking to alleviate and mitigate the impacts in such places where bats are causing nuisance or distress.'

In short, though the Government understood the issues and recognised the concerns expressed, 'for the reasons I have outlined, we do not support this Bill'. So it's going nowhere.

[Source: House of Lords – 27 April]

### May a parish council grant-aid a place of worship?

For information

At the request of Eddie Tulasiewicz, Head of Communications at the National Churches Trust, I prepared the following note on the vexed question of whether or not a parish or town council may grant-aid a church building. We thought it might be worth circulating more widely and *we should be particularly interested in any experiences of members may have had with parish council grants.*

Under the current law, parish councils and similar bodies raise a precept that enables money to be spent on matters that are important to, and benefit, the local community. Whether or not a parish or town council may use the proceeds of that precept to fund church buildings is, however, unclear.

The Society of Local Council Clerks has recently taken the view that parish councils and similar bodies in England and Wales (such as civil parish councils that have declared themselves by resolution to be 'town councils') are prohibited from giving money to places of worship by the terms of s 8(1)(i) Local Government Act 1894 and that – unlike other aspects of that Act – there was no subsequent legislation that overrode the prohibition. S.8 enumerates the powers of parish councils; and s.8(1)(i) reads as follows:

(i) to execute any works (including works of maintenance or improvement) incidental to or consequential on the exercise of any of the foregoing powers, or in relation to any parish property, *not being property relating to affairs of the church or held for an ecclesiastical charity.* [emphasis added].

A letter dated 6 May 2014 from Brandon Lewis MP, the then Parliamentary Under Secretary of State at DCMS, confirmed that the Government agreed that the 1894 prohibition was still

in force, though it did not offer any analysis of the relationship between the 1894 Act and subsequent legislation. Mr Lewis suggested that the possibility of amending the legislation would be looked at, but so far as we know, nothing has happened since then.

The Church of England takes the opposite view, arguing that parish councils *already* have the necessary powers to make such grants under ss.137(1) or (3) of the Local Government Act 1972; and the Church of England [Funding Guide](#) states that

Section 137 of the Local Government Act 1972 permits a Local Authority (whether at county, district or parish council level) to contribute towards the maintenance, repair of adaptation of churches *on the basis that the expenditure would be in the interests of, and bring benefits to, some or all of the inhabitants of the area* [emphasis added].

It has also been suggested that if the parish council is 'eligible' and has adopted the power of general competence under s.1 Localism Act 2011, there is no limit on the amount that it may spend on church repairs. However, the Historic Religious Buildings Alliance is aware of two cases in which an auditor has told a parish council that, under the 1894 Act, it cannot give money to a local church despite the express wish of the council to do so.

The report of the Taylor Review, [Sustainability of English Churches and Cathedrals](#) has recommended that the Government clarify the legal powers of parish and town councils to fund church buildings, explaining the problem like this:

Section 8 of the Local Government Act 1894 confers a number of additional powers on a parish council. Among these is the power to execute works subject to the condition that they do not relate to property relating to the affairs of the church. The Local Government Act 1972, however, permits a local authority (whether at county, district or parish council level) to contribute towards the maintenance, repair or adaptation of churches and even possibly levy a parish rate on the basis that the expenditure would be in the interests of, and bring benefits to, some or all of the inhabitants of the area.

Evidence submitted to the Review suggested that there is considerable confusion as to whether the 1972 Act supersedes the Local Government Act 1894, and that the 1894 Act is still perceived as a barrier, preventing investment in church buildings by local authorities. Clarification on this point should be given, whether by repealing section 8 of the 1894 Act, or by the issue of guidance. This should clarify that local authorities can invest in church buildings in accordance with Section 137 of the Local Government Act 1972.

Additionally, repeal or the issue of guidance should clarify that certain parish councils are also able to fund church buildings using powers contained in the Localism Act 2011. The Act allows certain parish councils, as long as they meet certain criteria, to pass a resolution which allows them to have the benefit of the so-called "General Power of Competence". An eligible parish council is one in which at least two-thirds of the members have been

elected (i.e. not co-opted), and in which the clerk has completed one of a specified range of training courses. Having passed such a resolution, the relevant parish council would have the power to fund repairs and improvements and changes to church property (albeit it would have to take such a decision in line with its proper internal processes).

In short, *the law seems unclear*, and whether or not the 1972 Act repealed the bar in the 1894 Act is disputed.

In my own view, for what it's worth (probably not a lot), it would appear in the circumstances to be unsafe for a parish or town council to rely on its powers in the 1972 Act to make a grant for a church building until the legal position is clarified – though that is a matter for the councils, not for CLAS.

[Source: CLAS Summary – 30 April]

## TAXATION

### OTS Inheritance Tax Review

For information **and possibly for action**

The Office of Tax Simplification (OTS) has [published](#) a call for evidence from those with personal experience of Inheritance Tax to inform a review of how it might be simplified.

If a person gives to charity in their will or during his or her lifetime, that donation is exempt from IHT. If 10 per cent or more of a person's net estate is given to charity by will, IHT may be payable on the whole estate at a lower rate of 36 per cent. There are also complex rules about the incidence of IHT between exempt and non-exempt parts of the residue on death.

The call for evidence includes one question relating specifically to how well the exemption and the lower rate of tax on death are understood by advisers and the public.

Responses should be made via the [online survey](#), before **8 June 2018**.

[Source: OTS – 27 April]

## WALES

### Ecclesiastical exemption and managing scheduled monuments

For information and possibly for action

Cadw has issued a [consultation](#) on:

- the draft Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (Wales) Order 2018;
- draft best-practice guidance, *Managing Change to Historic Places of Worship in Wales: the Ecclesiastical Exemption*; and
- draft best-practice guidance, *Managing Scheduled Monuments in Wales*.

The main changes proposed to ecclesiastical exemption are:

- removal of the exemption for conservation area consent;
- removal of the United Reformed Church from the exempt denominations; and
- clarification regarding the buildings covered by the exemption to eliminate occasions when both secular and denominational consents are needed.

New guidance, *Managing Change to Listed Places of Worship in Wales: the Ecclesiastical Exemption*, has been prepared to support denominations in their use of the exemption. It may also be useful for local planning authorities, congregations, and denominations and faith groups interested in seeking ecclesiastical exemption in the future.

*Managing Scheduled Monuments in Wales* has been produced as a further element in the series published in conjunction with the Historic Environment (Wales) Act 2016. Aimed primarily at owners, occupiers and managers of scheduled monuments, it explains what it means to own a scheduled monument and how to care for it and sets out the general principles to consider when managing and making changes to scheduled monuments. It also explains how to apply for scheduled monument consent, including the roles and responsibilities of owners and Cadw, and provides details about where to get further help and assistance.

The consultation will close on **Friday 13 July**. Responses can be made [online](#) or via [e-mail](#).

[Source: Cadw – 16 April]